

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 496

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO CRIMINAL LAW; AMENDING ELEMENTS OF THE CRIMES OF  
HARASSMENT AND STALKING; PROVIDING PENALTIES; AMENDING AND  
ENACTING SECTIONS OF THE HARASSMENT AND STALKING ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-3A-1 NMSA 1978 (being Laws 1997,  
Chapter 10, Section 1) is amended to read:

"30-3A-1. SHORT TITLE.--~~[Sections 1 through 5 of this  
act]~~ Chapter 30, Article 3A NMSA 1978 may be cited as the  
"Harassment and Stalking Act"."

Section 2. Section 30-3A-2 NMSA 1978 (being Laws 1997,  
Chapter 10, Section 2) is amended to read:

"30-3A-2. HARASSMENT--~~[PENALTIES]~~ PENALTY.--

A. Harassment consists of a person knowingly  
pursuing a pattern of conduct:

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underscored material = new  
[bracketed material] = delete

1                   (1) that is intended to annoy, seriously alarm  
2 or terrorize another person and that serves no lawful purpose.  
3 The conduct must be such that it would cause a reasonable  
4 person to suffer substantial emotional distress; or

5                   (2) with an electronic communication device  
6 that is intended to seriously alarm or terrorize another person  
7 and that serves no lawful purpose. The conduct must be such  
8 that it would cause a reasonable person to suffer substantial  
9 emotional distress.

10                   B. Whoever commits harassment is guilty of a  
11 misdemeanor."

12                   Section 3. Section 30-3A-3 NMSA 1978 (being Laws 1997,  
13 Chapter 10, Section 3) is amended to read:

14                   "30-3A-3. STALKING--PENALTIES.--

15                   A. Stalking consists of a person knowingly pursuing  
16 a pattern of conduct that would cause a reasonable person to  
17 feel frightened, intimidated or threatened. The alleged  
18 stalker must ~~[intend to place another]~~ intentionally act in a  
19 way that would place a reasonable person in reasonable  
20 apprehension of death, bodily harm, sexual assault, confinement  
21 or restraint or the alleged stalker must ~~[intend to]~~  
22 intentionally act in a way that would cause a reasonable person  
23 to fear for his safety or the safety of a household member. In  
24 furtherance of the stalking, the alleged stalker must commit  
25 one or more of the following acts on more than one occasion:

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1 (1) following another person, in a place other  
2 than the residence of the alleged stalker;

3 (2) placing another person under surveillance:

4 (a) by being present outside that  
5 person's residence, school, workplace or motor vehicle or any  
6 other place frequented by that person, other than the residence  
7 of the alleged stalker; or

8 (b) in a remote manner by means of an  
9 electronic communication device;

10 (3) harassing another person; or

11 (4) using any combination of written  
12 communication, verbal communication or an electronic  
13 communication device to publish, display or distribute  
14 information in a manner that would substantially increase the  
15 risk of harm or violence to the victim of stalking by a third  
16 party.

17 ~~[B. As used in this section, "household member"~~  
18 ~~means a spouse, former spouse, family member, including a~~  
19 ~~relative, parent, present or former step-parent, present or~~  
20 ~~former in-law, child or co-parent of a child, or a person with~~  
21 ~~whom the victim has had a continuing personal relationship.~~  
22 ~~Cohabitation is not necessary to be deemed a household member~~  
23 ~~for the purposes of this section.~~

24 G.] B. Whoever commits stalking is guilty of a  
25 misdemeanor. Upon a second or subsequent conviction, the

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1 offender is guilty of a fourth degree felony.

2           ~~[D-]~~ C. In addition to any punishment provided  
3 pursuant to the provisions of this section, the court shall  
4 order a person convicted of stalking to participate in and  
5 complete a program of professional counseling at his own  
6 expense."

7           Section 4. A new section of the Harassment and Stalking  
8 Act is enacted to read:

9           "[NEW MATERIAL] DEFINITIONS.--As used in the Harassment  
10 and Stalking Act:

11           A. "electronic communication device" includes a  
12 computer, video recorder, digital camera, fax machine, pager,  
13 audio equipment or any device that can produce an  
14 electronically generated image, message or signal; and

15           B. "household member" means a spouse, former  
16 spouse, family member, including a relative, parent, present or  
17 former stepparent, present or former in-law, child or co-parent  
18 of a child, or a person with whom the victim has had a  
19 continuing personal relationship. Cohabitation is not  
20 necessary to be deemed a household member for the purposes of  
21 the Harassment and Stalking Act."

22           Section 5. A new section of the Harassment and Stalking  
23 Act is enacted to read:

24           "[NEW MATERIAL] LOCATION OF AN OFFENSE.--When a person  
25 commits harassment or stalking by using an electronic

1 communication device, the offense may be deemed to have been  
2 committed either at the place where the electronic  
3 communication was originated or at the place where the  
4 electronic communication was received."

5 Section 6. EFFECTIVE DATE.--The effective date of the  
6 provisions of this act is July 1, 2004.

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